

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL CURTIS REYNOLDS,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 4:CV-09-00527
	:	
FEDERAL BUREAU OF	:	(Judge McClure)
PRISONS, ET AL.,	:	
	:	
Defendants.	:	

MEMORANDUM
April 7, 2009

BACKGROUND:

Michael Curtis Reynolds, an inmate presently confined in the Allenwood United States Penitentiary, White Deer, Pennsylvania (“USP Allenwood”), initiated this pro se civil rights action by filing a “Motion of Permanent Injunction,” which we will liberally construe as a complaint.¹ Reynolds also filed a Motion for Leave to Proceed In Forma Pauperis, which we will grant. (Rec. Doc.

¹Although Reynolds claims in a letter to the court that this is a 28 U.S.C. § 2241 petition (Rec. Doc. No. 6), nowhere in his Motion does it indicate that this should be a § 2241 petition. The type of claim Reynolds makes, that he was deprived of his rights, is a 42 U.S.C. § 1983 claim. Moreover, the cases that Reynolds relies on in his Motion, Turner v. Safley, 482 U.S. 78 (1987), and its progeny, are § 1983 cases, not § 2241 cases.

No. 5). For the reasons set forth below, Reynolds' complaint will be dismissed, without prejudice pursuant to the screening provisions of 28 U.S.C. § 1915(g).

Named as defendants are the Federal Bureau of Prisons, Warden Ricardo Martinez, Assistant Warden Julie Nicklin, and Unit Manager Tollackson. Reynolds' complaint indicates that he has been subjected to one-hour check-ins, a work restriction, no phone calls, and no access to computers. As relief Reynolds seeks an injunction to cease all restrictions and restore all privileges.

DISCUSSION:

Under §1915(g), a federal civil action by a prisoner proceeding in forma pauperis is barred if he or she:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Reynolds, while incarcerated previously initiated six civil actions which were dismissed by this Court under 28 U.S.C. § 1915(e)(2)(B) as being frivolous: Civ. Nos. 4:06-CV-01190; 4:06-CV-01753; 4:06-CV-02466; 4:07-CV-00083; 4:07-CV-00131; and 4:07-CV-00297. Those actions constitute three strikes as contemplated under §1915(g). As a result, Reynolds has also had six civil actions which were dismissed by this Court under 28 U.S.C. §1915(g): 4:07-CV-00159; 4:07-CV-00161; 4:07-CV-00892; 4:07-CV-00945; 3:07-CV-01042; and 4:08-CV-

02020.

The only exceptions to the three strikes requirement is if the alleged unconstitutional conduct places the inmate plaintiff in danger of imminent “serious physical injury” at the time his complaint was filed. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001). It must be shown that “the danger of serious physical injury was imminent at the time the complaint was filed, not at the time of the alleged incident.” McCarthy v. Warden, USP-Allenwood, 2007 WL 2071891 *2 (M.D. Pa. July 18, 2007)(Caldwell, J.). Past danger is insufficient; rather, the danger must be about to occur at any moment or impending. See id.

Reynolds has made no allegation of imminent serious physical injury.

For all of the foregoing reasons, Reynolds’ present civil rights action will be dismissed under § 1915(g).

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge

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FEDERAL BUREAU OF	:	(Judge McClure)
PRISONS, ET AL.,	:	
	:	
Defendants.	:	

ORDER
April 7, 2009

In accordance with the accompanying Memorandum,

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion for Leave to File In Forma Pauperis is GRANTED.
(Rec. Doc. No. 5).
2. Plaintiff's complaint is dismissed pursuant to 28 U.S.C. § 1915(g).
3. The clerk is directed to close the case file.

4. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

s/ James F. McClure, Jr.

James F. McClure, Jr.
United States District Judge